IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13/02/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 2908 of 2003 and Writ Petition No. 4144 of 2003
and
W.P.M.P.Nos. 3650 and 5221 of 2003.

W.P.No. 2908/2003

V-Can Network (P) Ltd.,
represented by its Chairman cum
Managing Director R. Radhakrishnan.
17-A, Muthuramalingam Street,
Rajaji Colony, Saligramam, Chennai-93. .. Petitioner.

-Vs-

1. The Home Secretary,
Government of Tamil Nadu,
Fort St. George, Chennai-9.

2. The Director General of Police,
Kamarajar Salai, Mylapore,
Chennai.

3. The Commissioner of Police,
Egmore, Chennai-8. .. Respondents.

W.P.No. 4144/2003
1. N. Seeni Prakash,
2. V. Selvam,
3. A. Chandru,
4. T. Shyamala Kumari,
5. J. Nagarajan.
.. Petitioners.
Vs.
1. The State of Tamil Nadu,
represented by its Secretary,
Home Department, Fort St. George,
Chennai-9.

2. Director General of Police,
Kamarajar Salai, Mylapore,
Chennai-4.

3. Commissioner of Police,
Commissioner's Office,
Chennai-8. .. Respondents.

Petitions under Article 226 of the Constitution of India, for issuance of Writ of Mandamus, as stated therein.

For petitioner in W.P.2908/2003 : Mr. R. Gandhi, Senior counsel
for Mr. A. Natarajan

Mr. AR.L. Sundaresan:- For petitioners in
WP.No.4144/2003.

For respondents in both W.Ps. : Mr. K. Abudu Kumar Rajaaratnam,
Govt.,Advocate (Crl.Side)

:COMMON ORDER

V-Can Network (Private) Limited, through its Chairman cum Managing Director, Saligramam, Chennai-93 has filed Writ Petition No. 2908/2003 to issue a Writ of Mandamus, directing the respondents not to prevent the petitioner's company from carrying on their day-to-day business of selling their products and services under the multi-level marketing scheme by using their respective offices and network systems, in Chennai.

2. Five distributors of V-Can Network Private Limited have filed Writ Petition No. 4144/2003 seeking a Writ of Mandamus, forbearing the respondents from interfering with their business in selling the products of V-Can Network (P) Limited under their Multilevel Marketing Scheme by using their respective offices and Network Systems in Chennai. Since the issues raised in both the writ petitions are common, they are being disposed of by the following common order.

3. The case of the petitioner in Writ Petition No. 290 8/2003 is briefly stated hereunder:
According to the petitioner, V-Can Network is a private limited company, registered under the Companies Act on 2-11-2001. The company has also been registered as a dealer under Central Sales Act and the Tamil Nadu General Sales-tax Act. The company is engaged in manufacturing Home Appliances of consumer durables etc. The company is adopting the procedure for marketing the products which is called multi-level marketing or network marketing system, accordingly they had introduced 3 major products, namely, "Ozone Water Purifier", " Magnetic Bed", and "Companion" (multi-purpose foldable table with four seats and designed to look like a suitcase). These 3 products are sold under the distribution system in addition to the direct sales by the company and each of the above said items would cost Rs.5,990/-. The petitioner company is not making any adverti sement through any media for selling their products, and the sale is being net-worked from individual to individual.
This system already existed in India and many other companies are doing the same business of individual networking system. The consumer of their products

makes the purchase out of his own will and there is no compulsion in the business and the same person out of his own decision and will may become a distributor or may remain as consumer himself. The distributor is getting commission for the sale he is undertaking and such independent distributor have the power not only to sell the products of the company, but also appoint two other distributors under him and all of them can sell the company products and earn the value points, apart from the incentive commission on the value of the products sold. The products are also sold under direct sale marketing including, door to door sales and by exhibiting the products and also by institutional sale. The purchaser of the products who became distributor on accumulation of 600 value points, then he became an independent distributor and became eligible to avail discount upto 30% of the sale price of the product. The principle underlying this system is instead of having the wholesale dealer or retailer, the network marketing system enables the consumer himself to be the distributor to venture upon marketing of the products. The significant feature of this network marketing system is providing opportunity to the purchasers who also earn money to become distributors by effecting the sale through them and, therefore, the profit is being shared reasonably by the company to the distributors on the sale of every product and the distributors also become consumers of the products. The said 3 items were manufactured scientifically for the day-to-day use. The magnetic bed is introduced as a resting medium and therapeutic device. The beds are embedded with Magnets on the surface placed in strategically spread locations across the bed that vitalizes the various areas of the body. Their products are not opposed to any law and the same are as per the legal requirements. Nearly 50,0 00 distributors in 5 States are depending on this business and nearly 2 lakh people are directly involved and earned their livelihood out of this network system. The petitioner company is paying sales-tax and income-tax regularly and their company is considered to be one of the highest deductors of TDS of income-tax. Though there is no complaint from any quarter, recently the third respondent had arrested four distributors of their company and registered a case against them in Crime No.42 of 2003. The respondents police sealed their office premises and froze their company bank account. Leading legal personalities have certified that their system of business would not fall within the ambit of the prize, chit as described in Section 2 (c) and 2 (e) of the Central Act 43 of 1978. They also opined that their business does not fall within the definition of Section 2 (1) of the money circulation or prize chit within the meaning of Section 2 (e) of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In spite of all the above aspects, the third respondent had attached their bank accounts, internet servers and sealed their head office and other offices, godowns, factories, show rooms and other establishments in Chennai. Hence the present writ petition for necessary direction.

4. In Writ Petition No. 4144/2003, five distributors of V-Can Network Private Limited have prayed for similar direction to the respondents from interfering with their business in selling the products of V-Can Network. They raised that they are not manufacturing any of the items and mere distributors of V-Can Network.

5. On direction by this Court, learned Government Advocate (Criminal side) received instructions from the respondents.

6. Heard Mr. R. Gandhi, learned senior counsel for the petitioner in W.P.No.2908/2003; Mr. AR.L. Sundaresan, learned counsel for the petitioners in W.P.No.4144/2003; and Mr. K. Abudu Kumar Rajaratnam, learned Government Advocate (Criminal side) for respondents.

7. The only point for consideration in both these writ petitions is, whether the petitioners have made out a case for issuance of Writ of Mandamus, forbearing the respondents from interfering with their business, namely, V-Can Network from carrying on their day-to-day business of selling their products and services under the Multi-Level Marketing Scheme by using their respective offices and network systems in Chennai and other places.

8. First I shall consider the claim of V-Can Network (Private) Limited. Mr. R. Gandhi, learned senior counsel for the VCan Network, would contend that the petitioner is a company, registered under the Companies Act and under the provisions of the Central Sales-tax Act as well as the Tamil Nadu General Sales-tax Act. According to him, the petitioner company is marketing three major products, namely, (i) Ozone Water Purifier; (ii) Magnetic Bed; and (iii) Companion, in lawful manner, without advertisement in any media. He also contended that for the last 5 years, no one has made any complaint against them either before the Consumer Forum or to the police, complaining their products. According to him, without any reasonable cause and due to mala fide intention, the respondents are attempting to interfere with their lawful business and sealed their office premises, froze their company accounts without any authority of law. Mr. AR.L. Sundaresan, learned counsel for the petitioners/distributors in W.P.No. 4 144/2003, reiterated the stand taken in their affidavit, stating that they are only distributors of V-Can Network System.

On the other hand, Mr.K. Abudu Kumar Rajaratnam, learned Government Advocate (Criminal side), on instruction, would contend that based on a complaint from one Jayaraman, a case in Crime No.42/2003 was registered on 24-01-2003 under Prize Chits and Money Circulation Schemes (Banning) Act, 1978; Indian Medical Council Act; Drug and Magic Remedies Objectionable Advertisement Act, 1978 and under Indian Penal Code. According to him, the initial investigation discloses a prima facie case of cheating which is punishable under Section 420 I.P.C. and the petitioner/distributor is conducting a money circulation scheme which is punishable under Section 3 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In such circumstances, at the stage of investigation, interference by this Court is not warranted; accordingly he prayed for dismissal of both the writ petitions.

9. It is seen from the information furnished by the learned Government Advocate that a case in Crime No.42/2003 was registered on 24-01-2003, under Sections 420 and 506 (1) I.P.C.; under Sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978; under Section 15 of Indian Medical Council Act; under Sections 3 and 4 of Drug and Magic Remedies

Objectionable Advertisement Act, 1978 by Central Crime Branch, Chennai City Police, based on a complaint given by one Jayaraman, son of Kannusamy, No.40, Vellala Street, Ayanavaram, Chennai-23. The allegation in the complaint is that one Senthil Murugan, who had become a member and who had bought a magnetic bed, falsely induced the complainant that if he purchases a magnetic bed for Rs.5,990/-, he would in turn become a member and if he in turn introduces two more members, he would make quick money to the tune of lakhs of rupees and thereby cheated the complainant. Though Mr. R. Gandhi, learned senior counsel for V-Can Network, after taking me through the contents of the entire complaint, vehemently contended that no prima facie case was made out against V-Can Net work, it is seen from the materials placed by the learned Government Advocate, and according to him (Government Advocate), the initial investigation discloses a prima facie case of cheating, which is punishable under Section 420 I.P.C., and also discloses that they are conducting money circulation scheme, which is punishable under Section 3 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. He also contended that since the First Information Report discloses a cognizable offence, the Investigation Officer registered the case in Cr.No.42/2003 as contemplated under Section 156 of the Code of Criminal Procedure. Though in the affidavit as well as in the course of argument, learned senior counsel for V-Can Network vehemently contended that the Magnetic bed and other products were created scientifically for the dayto-day use, learned Government Advocate, by placing relevant materials, would contend that these products were made by few lay men unscientifically and according to him, the cost of each product does not exceed Rs.500/-. In other words, according to the learned Government Advocate, these products were neither scientifically manufactured nor certified by the competent authority, and these were being manufactured manually at a cost of Rs.500/-. It is also claimed by the respondents that the petitioner company has falsely induced thousands of persons by making false claims that their products have therapeutic and medicinal values and thereafter supplied them with inferior quality products which are worthless and thereby cheated them and amassed illgotten wealth to the tune of crores of rupees. Learned Government Advocate has also brought to my notice that so far the police have received 30 complaints against V-Can Network and they are actually investigating the matter in detail.

10. It is useful to refer the statement of Objects and Reasons for the enactment of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. In June, 1974, the Reserve Bank of India had constituted a Study Group under the Chairmanship of Shri James S. Raj, the then Chairman, Unit Trust of India, for examining in depth the provisions of Chapter III-B of the Reserve Bank of India Act, 1934 , and the directions issued thereunder to non-banking companies in order to assess their adequacy in the context of ensuring the efficacy of the monetary and credit policies of the country and affording a degree of protection to the interests of the depositors who place their savings with such companies. In its report submitted to the Reserve Bank in July, 1975, the Group observed that the prize chit/benefit/ savings schemes benefit primarily the promoters and do not serve any social purpose, and that they are prejudicial to the public interest and affect the efficacy of the fiscal and monetary policies of the country. Ultimately the Group recommended that prize chits or money circulation schemes, by whatever name called, should

be totally banned in the larger interests of the public and suitable legislative measures should be undertaken for the purpose. Pursuant to the said recommendation, the Parliament enacted the Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Among the other provisions, the following sections are relevant:

"Section 2 (c) "money circulation scheme" means any scheme, by whatever name called, for the making of quick or easy money, or for the receipt of any money or valuable thing as the consideration for a promise to pay money, on any

event or contingency relative or applicable to the enrolment or members into the scheme, whether or not such money or thing is derived from the entrance money of the members of such scheme or periodical subscriptions;

Section 3. Banning of prize chits and money circulation schemes or enrolment as members or participation therein.- No person shall promote or conduct any prize chit or money circulation scheme, or enrol as a member to any such chit or scheme , or participate in it otherwise, or receive or remit any money in pursuance of such chit or scheme."

Sections 4 and 5 speak about punishments. Learned Government Advocate points out that the investigation prima facie discloses an offence under Prize Chits and Money Circulation Scheme (Banning) Act, 1978, whereby V-Can Network are running a Money Circulation Scheme and they sell inferior products to the public after enrolling them as members/distributors and thereafter promise them that they can make quick and easy money. It is further brought to my notice that they then in turn falsely induce more members into the scheme. According to them, this very scheme is a chain fraught with manipulation and deceit. It is to be noted that in order to curb offences in the name of schemes/promotion/distribution/membership, the said Act was enacted. As per Section 3 of the Act, no one is permitted to promote or conduct either prize chit or money circulation scheme, or enrol any one as member for the same and receive any money in pursuance of such chit or scheme. Learned Government Advocate has produced pamphlets and details regarding Money Circulation Scheme. As rightly pointed out by Mr. Abudu Kumar Rajaratnam, learned Government Advocate, all these issues have to be investigated in detail. Considering the plea of the learned Government Advocate that so far the police have received 30 complaints against V-Can Network, in the light of the statutory provisions referred to above, I am of the view that interference by this Court exercising extra-ordinary jurisdiction under Article 226 of the Constitution of India is not warranted at this juncture.

11. As per definition 2 (c), money circulation scheme or multi-level marketing or whatever by name called, is a fraud being played on the hapless and innocent public by way of manipulation and deceit. It is the case of the respondents that inferior quality products are sold with false claims at exorbitant rates while the products are worthless and thereby they cheat the public. Likewise, the members/distributors are falsely induced by selling inferior products at exorbitant rates which are worth nothing and in turn for them to make quick or easy money. The members/distributors have to falsely induce more members. It is demonstrated before me that as per that scheme,

every member/distributor has to be necessarily enrolled with a membership fee which is taken by the petitioner/promoter to buy their products and each member/distributor has to falsely induce and enrol more members and if that is done, he gets a minor share of the illgotten wealth and thereby the chain continues. I have already referred to the Statement of Objects and Reasons in enacting the legislation, namely, Prize Chits and Money Circulation Schemes (Banning) Act, 1978. The intention of the legislation was to prevent white collar crimes being perpetrated on hapless and innocent public. It is the case of the respondents that the preliminary investigation prima facie discloses that the petitioner/promoter company is involved in money circulation scheme, thereby whatever money is paid to a member/ distributor is money paid by the members themselves to a minor extent and the major part is illegally kept by the petitioner/promoter company by false inducement and false representations. It is also demonstrated before me that unless the member/distributor falsely induces others to become members/distributors, they cannot make quick or easy money and the money paid or circulated as commission or incentive is only the ill-gotten money made from other members/distributors and the chain continues by manipulation and deceitful false claims. In such circumstances, since the investigation is at the crucial stage, I am of the view that any interference in the investigation will seriously hamper and prejudice the investigation.

12. Regarding the allegations, namely, supply of inferior quality products, making false claims, etc., and counter allegations that the products are scientifically manufactured etc., I am of the view that the same are to be ascertained only by a thorough investigation.

13. Learned senior counsel for the petitioner has contended that though this system already existed in this country and multi-national companies are doing the same business, the petitioner-VCan Network alone was singled out and the police have taken action against them. For this, the learned Government Advocate has brought to my notice that they have already taken action against promoters of Cymbolic Multi-crore company and arrested the persons concerned. It is also stated that their bail applications were dismissed. He also brought to my notice that apart from this, a case has been registered in Crime No. 230/2003 on the file of Inspector of Police, Central Crime Branch, Chennai against Japan Life company which is also indulging in the sale of magnet beds and about 80 persons have already been arrested and later released on bail. The above particulars show that there is no mala fide intention on the part of the respondents and there is no basis for the allegation that action was taken against the petitioner alone.

14. Both Mr. R. Gandhi, learned senior counsel for VCan Network and Mr. AR.L. Sundaresan, learned counsel for the distributors, would contend that the investigating agency is not justified in sealing their office premises, freezing their bank accounts and interfering with their business. I have already referred to about the complaint of one Jayaraman which is the subject matter in Crime No.42/2 003 on the file of Central Crime Branch, Chennai City

Police, and receipt of 30 similar complaints as on date against V-Can Network. In the light of the allegations made in the complaint/complaints, the police officer during investigation is entitled to seize "property" of the accused. It is clear from Section 102 Cr.P.C. that the bank account of the accused or any of his relation to "property" within the meaning of section 102 Cr.P.C., police officer in course of investigation can seize/freeze the operation of the said account if such assets have direct link with the commission of offence for which the police officer is investigating into. In this regard, learned Government Advocate has very much relied a decision of the Apex Court in STATE OF MAHARASHTRA v. TAPAS D. NEOGY, reported in (1999) 7 Supreme Court Cases 685 wherein Their Lordships have held that a plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. They further observed that the legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. According to them, the two preconditions for applicability of Section 102 (1) are that firstly, it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. Their Lordships further held that the bank account of the accused or any of his relations is "property" within the meaning of section 102 Cr.P.C. and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence which the police officer is investigating into. In the light of Section 102 Cr.P.C. and in view of the interpretation of the Apex Court, I am of the view that the police officer in the course of investigation can seize or prohibit the operation of the bank account of not only the accused, but also any of his relations, if there is evidence to show that such assets have direct links with the commission of the offence which the police officer is investigating into. In the light of the particulars placed before the Court and in view of the above discussion, I am unable to accept the argument of both the learned counsel for the petitioners. Further, as per Section 156 Cr.P.C., it is the duty of the police officer to investigate any cognisable case within the limits of his jurisdiction. I have already referred to the complaint of one Jayaraman and others. In such a circumstance, the police officer is duty bound to investigate the cognisable cases and file a final report for taking further action. Even though it is contended that the petitioner/V-Can Network has not committed any offence under section 420 I.P.C., in the light of the details furnished and the

statement made in the form of complaints, I am of the view that it is for the investigation agency to find out the truth and it is not for this court to make any comment or interfere at this stage.

15. It is also brought to my notice that by order dated 11-02-2003 in Criminal O.P.No. 2970 of 2003, this Court (C. Nagappan, J.) set aside the order of Principal Sessions Judge, Chennai dated 2 9-1-2003, in Crl.M.P.No. 880 of 2003 and cancelled the anticipatory bail granted in favour of the Chairman cum Managing Director of V-Can namely R. Radhakrishnan, petitioner in W.P.No. 2908/2003. It is also relevant to note that the learned Judge referred to the complaint dated 24-1-2003 of one Jayaraman and after

considering the specific allegations made thereunder and the relevant provisions and also taking note of the larger interests of the public, cancelled the anticipatory bail granted in favour of the Chairman cum Managing Director of VCan Network. I have also perused the brochures and pamphlets produced by the learned Government Advocate which reveal the conduct of business of the petitioner company. It also shows that 2 lakhs members are involved in the business of the company. Learned Government Advocate demonstrated that the business of the petitioner company is based on the Money Circulation Scheme, which is banned under Central Act 43 of 1978. Section 3 of the said Act provides for the ban of Money Circulation Scheme and under Section 4, whoever contravenes Section 3 shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs.5,000/- or with both. The petitioner was also charged under Sections 420 and 506 (i) I.P. C. apart from other provisions.

16. Under these circumstances and taking note of all the materials placed before this Court, the complaint of one Jayaraman as well as other 30 complaints which were made subsequent to the filing of the writ petition, and the number of persons involved, I am of the view that the prayer sought for by V-Can Network at this crucial stage of investigation cannot be acceded to. Though they claim innocence and their business being lawful, the same has to be ascertained only after thorough investigation, final report, trial, evidence and judgment and in such a circumstance, the grievance expressed by VCan Network and the distributors cannot be gone into in a writ jurisdiction under Article 226 of the Constitution of India. It is needless to mention that it is open to them to put-forth their defence before the appropriate forum/Court if their business/activities are lawful. It is further made clear that if there is any unnecessary delay on the part of the investigation agency, in the light of sealing of their business concerned and freezing of bank accounts, it is open to them to approach the appropriate Forum/Court for necessary direction. This Court hopes that the Investigation Agency will undertake the task promptly and complete the same expeditiously. With the above observation, both the Writ Petitions are dismissed. No costs. Consequently, W.P.M.Ps., are closed.

R.B.
Index:- Yes
Internet:- Yes
To:-
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